

STATE OF MICHIGAN  
COURT OF APPEALS

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DERRICK JESSIE GREEN,

Defendant-Appellant.

---

UNPUBLISHED

October 12, 2006

No. 261832

Wayne Circuit Court

LC No. 03-012074-01

Before: Hoekstra, P.J., and Meter and Donofrio, JJ.

PER CURIAM.

Defendant was charged with first-degree premeditated murder, MCL 750.316(1)(a), and possession of a firearm during the commission of a felony, MCL 750.227b. Following a jury trial, defendant was convicted of the lesser offense of second-degree murder, MCL 750.317, and of felony-firearm. Defendant was sentenced to 240 to 480 months in prison for the second-degree murder conviction and to two years in prison for the felony-firearm conviction. Defendant appeals as of right. We affirm.

Defendant's first issue on appeal is that the trial court erred in refusing his request for appointment of new counsel. We find no basis for relief with respect to this issue because defendant waived this claim at trial.

"A defendant may not waive objection to an issue before the trial court and then raise it as an error before this Court." *People v Fetterley*, 229 Mich App 511, 520; 583 NW2d 199 (1998). "Waiver is different from forfeiture. Whereas forfeiture is the failure to make the timely assertion of a right, waiver is the intentional relinquishment or abandonment of a known right." *People v Carines*, 460 Mich 750, 762-763, n 7; 597 NW2d 130 (1999) (internal citations and quotation marks omitted). Quoting *United States v Olano*, 507 US 725, 733; 113 S Ct 1770; 123 L Ed 2d 508 (1993). If a defendant waives his rights, rather than forfeits them, that waiver extinguishes any error. *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000).

In this case, on the first day of trial, defendant told the trial judge that he had been trying to get another attorney, he did not believe his attorney was acting in his best interests, and he had filed a grievance against his attorney. When defendant refused to give the trial judge specific details of his complaints against his attorney, the judge granted defendant and his attorney time to discuss the matter in private and try to reach an agreement. The following day, both defendant and his attorney indicated to the judge that they were "seeing eye to eye" and were ready to

proceed with the trial. This affirmation constitutes a waiver on the part of defendant regarding his request for substitute counsel, and, therefore, precludes appellate review of the issue.

Defendant's second issue on appeal is that the trial court erred in denying his motion for a directed verdict on the first-degree murder charge. We disagree. This Court reviews a motion for a directed verdict de novo to determine whether a rational fact-finder could have concluded that the prosecution proved all elements of the crime beyond a reasonable doubt. *People v Aldrich*, 246 Mich App 101, 122-123; 631 NW2d 67 (2001). We must consider all the evidence presented up to the time of the motion for a directed verdict. *People v Allay*, 171 Mich App 602, 605; 430 NW2d 794 (1988).

To convict a defendant of first-degree premeditated murder, the prosecution must prove that the defendant intentionally killed the victim and premeditated and deliberated the killing. *People v Mette*, 243 Mich App 318, 330; 621 NW2d 713 (2000); MCL 750.316. To establish premeditation and deliberation, there must have been sufficient time for the defendant to take a "second look," and this may be inferred from the circumstances. *People v Kelly*, 231 Mich App 627, 642; 588 NW2d 480 (1998). "The length of time necessary to 'measure and evaluate a choice before it is made is incapable of precise determination'; all that is necessary is enough time to take a 'second look' at the actions contemplated." *People v DeLisle*, 202 Mich App 658, 660; 509 NW2d 885 (1993), quoting *People v Coddington*, 188 Mich App 584, 599-600; 470 NW2d 478 (1991).

In his statement to the police, defendant stated as follows: He had been drinking before the incident. Around 2:00 a.m., he and his girlfriend, Angela Miles, began arguing upstairs in their home. He told her he was leaving and began packing a bag. She scratched the top of his hand, so he became angry. Miles called her stepfather, Herbert Gaskin, because she was planning to take her young daughter and two young sisters to his place, but defendant said, "no[,] I will leave," and he kept hanging up the telephone and finally unplugged it. Gaskin came over while defendant was still packing, and Miles went downstairs. When Miles came back upstairs, defendant was packing his gun. Defendant and Miles continued arguing and went into the children's room. Defendant then shot her in the head.

Additional evidence demonstrated that, around 4:20 a.m., Miles called Gaskin to come over to pick up the children. When Gaskin arrived, Miles opened the door and appeared upset. Gaskin stayed downstairs by the door while Miles went upstairs. Next, Gaskin heard Miles scream that defendant had a gun. Gaskin started going up the stairs, and then he heard three shots. Gaskin proceeded up the stairs and saw defendant leaning over Miles with a gun in his hand. Miles's daughter and two sisters were also present in the room.

An autopsy was performed on Miles's body, and the examination revealed three contact gunshot wounds to Miles's head, meaning the gun was in contact with the skin when it was fired. There were no drugs or alcohol in Miles's body. The cause of death was determined to be multiple gunshot wounds to the head, and the manner of death was homicide.

A rational jury could have inferred premeditation and deliberation from the length of time defendant and Miles were arguing; Miles's telephone call to Gaskin, demonstrating that she was concerned for the children's safety; defendant's transportation of his gun from their shared bedroom to the children's bedroom; Miles's scream that defendant had a gun; and the three

contact gunshot wounds. Therefore, the evidence presented at trial was sufficient to submit the first-degree murder charge to the jury, and the trial court did not err in denying defendant's motion for a directed verdict.

Affirmed.

/s/ Joel P. Hoekstra  
/s/ Patrick M. Meter  
/s/ Pat M. Donofrio